

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL NO. 13-CR-01876 JB

JASON LOERA,

Defendant.

**MOTION TO STRIKE EXHIBITS OR IN THE
ALTERNATIVE TO VACATE SENTENCING UNTIL DEFENDANT
CAN REVIEW, RESPOND AND MAKE APPROPRIATE CHALLENGES
TO THE GOVERNMENT’S SUPPLEMENTAL EXHIBITS**

COMES NOW Jason Loera, by and through his counsel, Jerry A. Walz, Walz and Associates, P.C. and hereby moves to strike in their entirety the Government’s exhibits that were filed on May 19, 2017, [Doc. 193], or in the alternative to vacate the sentencing hearing set for Friday, May 26, 2017, until such time as Defendant can review, respond to and make appropriate Challenges to the Government’s Supplemental Exhibits, and as grounds therefore states as follows:

1. Sentencing has been set in this matter for Friday, May 26, 2017. [Doc. 190].
2. The Government on May 19, 2017, filed supplemental exhibits identified as follows:

Exhibit 1, Jane Doe’s and Her Mother’s Victim Impact Statement;
Exhibit 2, Forensic psychological evaluation, by Randall Green, Ph.D.;
Exhibit 3, CV of Randall Green, Ph.D;
Exhibit 4, Chapter 5, “Victims of Child Pornography,” United States Sentencing Commission Report to Congress, December 2012; [Doc. 193].

3. These exhibits are not scientifically validated, are highly prejudicial, and seek to sway the Court unfavorably against Defendant Loera based on material developed in other matters which the Government wants to apply to Defendant Loera’s case.

4. There are highly prejudicial affidavits from a mother and an alleged victim of

criminal acts of her father who placed pornographic materials of his own daughter on the internet for viewing.

5. There are selections from a report which was provided to Congress by the Sentencing Commission concerning sentencing for child pornography.

6. Finally, there is an economic study showing alleged compensable loss measured in economic terms to an individual who was the victim of a child pornographer. The economic study and analysis was performed by Economist Stan Smith from Chicago who has long been noted in litigation circles for not utilizing tested economic methodology in formulating his conclusions. Further, without the opportunity to depose Economist Smith, it cannot be said to any degree of certainty that these figures are even applicable to any of the individuals whose images were placed by others (not Loera) on the internet. It is highly doubtful that the proffered economic study by Professor Smith could withstand an appropriate Daubert challenge. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589, 113 S. Ct. 2786, 2795 (1993) (the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.)

7. Defense counsel who received these exhibits on Friday, May 19, was at the time preparing for a summary trial before a private judge for May 22 and 23, that will conclude a U.S. District Court case that has been ongoing for many years, *J.L. v. DOH et al*, 12-cv-1145-MV-GJF.

8. This summary trial is work and time intensive, and as such, defense counsel simply cannot create and/or carve out any time to further investigate and/or respond to this very recently filed supplemental material.

9. There was no explanation offered with the filing as to why this supplemental material was not filed earlier in order to give Defendant and his counsel sufficient time to appropriately respond.

WHEREFORE, based on the above, Defendant requests that the Government's exhibits filed on May 19, 2017, be stricken and not considered by the Court, or in the alternative to vacate and reset the sentencing date at a later time to allow Defendant and his counsel to respond to and/or file appropriate objections and challenges to the supplemental exhibits for the reasons stated above.

The Government has been contacted and opposes this requested relief.

Respectfully submitted,

WALZ AND ASSOCIATES, P.C.

/s/ Jerry A. Walz
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I HEREBY CERTIFY that on the 22nd day of May, 2017, I filed the, foregoing electronically through the CM/ECF system, which caused the parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Kristopher Houghton, Esq.
Assistant United States Attorneys
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/s/ Jerry A. Walz
Jerry A. Walz, Esq.